

EXHIBIT K-3

1 Goldhamer - direct

2 time to do it. I am usually doing this
3 during a two to three minute commercial
4 break.

5 There is only so much time and
6 just to vary it up so the top contestants
7 aren't always the first.

8 Q. What do you do with the card,
9 Exhibit 36, once you put the stickers on?

10 A. The card is delivered generally
11 almost in the nick of time from the hosts
12 when they are coming back from the
13 commercial and read it on the air.

14 Q. Do you give that information to
15 anybody else?

16 A. It is given -- at the point where
17 we prepared the card we call the truck where
18 the director and the folks who work on his
19 team and they use that information we
20 understand to just position the cameras so
21 they can anticipate which girl is going to
22 be called next.

23 Q. How much time passes between the
24 moment the card is created and the moment
25 that it is announced that the top ten are

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2 announced on live television?

3 A. It is a few minutes. So it varies
4 from show to show.

5 It depends on from time to time
6 anywhere from two minutes to five minutes at
7 the most because sometimes we deliver to the
8 hosts. They come back from commercial.

9 They show a videotape to the
10 audience so there might be an extra minute
11 or two built in there but it is usually less
12 than -- it is called seven minutes at the
13 very, very high end.

14 Q. Is that information on the card
15 given to anyone else other than the
16 production truck and the host before it is
17 announced on live television?

18 A. No.

19 Q. Then once we are down to ten what
20 happens?

21 A. So the ten compete in the evening
22 gown competition and it is basically the
23 same routine.

24 It is the Olympic-type scoring
25 system where the judges -- as the girls are

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2 coming out one by one are entering their
3 scores into their respective judges'
4 terminals during the evening gown
5 competition.

6 Q. Exhibit 12?

7 A. Yes.

8 Q. What is Exhibit 12?

9 A. Exhibit 12 is the detail of the
10 specific votes that were cast by the judges
11 in the evening gown competition.

12 Q. What does this Exhibit 12 take us
13 down to in terms of the number of
14 contestants?

15 A. It takes us down to five.

16 Q. Once, sorry.

17 Is Exhibit 12 created in the same
18 manner as Exhibit 11?

19 A. Exact same. It is a dot matrix
20 printer. It prints out real time. Exact
21 same. Literally, the exact same.

22 Q. The judges type in the information
23 on their key pad, it goes right to your
24 secure computer. This prints, you
25 retabulate and confirm and then you put it

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2 on a card?

3 A. Correct. Yes. We use this card.

4 Q. Which is Exhibit 37?

5 A. 37, yes. Exact same thing.

6 Q. That gets us down to how many?

7 A. It gets us down to five.

8 Q. How much time exists between the
9 moment you create the card and the moment it
10 is announced on national television?

11 A. It varies. I actually brought the
12 show rundown. I can tell you exactly.

13 Q. Just give us the rough.

14 A. It is a handful of minutes.

15 Evening gown -- so this one is about, let's
16 call it, the same, seven minutes or so.

17 Q. Prior to you creating that card no
18 such card exists, is that right?

19 A. Yes. I create it.

20 Q. Then we have five left and how do
21 we get to the finalist?

22 A. The finalist goes through some
23 interviews on stage with the host and the
24 judges ask some questions and the last event
25 is a ranking.

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2 The ranking is done ranking them 1
3 through 5.

4 So the girls are brought out one
5 by one and as each judge's evaluating the
6 girls, this is the girl that should be in
7 the first place or winner they would enter a
8 1 on to this computer system, into the
9 terminal.

10 The second place would be 2, 3, 4
11 and 5.

12 The way the system works there is
13 another control to the terminal where the
14 keys actually illuminate and if somebody has
15 voted 4 for the first girl, when the next
16 girl comes out 4 is no longer illuminated.

17 That just prevents the judge from
18 voting two places for two different girls --
19 same place for two different girls.

20 THE ARBITRATOR: May I ask a
21 question?

22 People vote before they have
23 actually heard each of the contestants?

24 THE WITNESS: No. So the sequence
25 of events is the swimsuit gets 16 to 10,

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2 the evening gown gets 10 to 5 and then
3 the girls go through typically one or
4 two rounds of interview-type questions
5 after which point the judges then need
6 to listen to everything they have heard
7 and rank them 1 through 5.

8 BY MR. BALBER:

9 Q. Are you aware of something called
10 the final look?

11 A. I am.

12 Q. What is the final look?

13 A. The final look is what I was just
14 describing where the girls are coming out,
15 contestants are coming out one at a time.

16 The judges get I assume a final
17 look but what they are doing is entering
18 their scores at that point.

19 Q. This is after the interviews have
20 all taken place?

21 A. Yes. This is the last sequence,
22 yes.

23 Q. So the judges are typing again on
24 the key pad. They are ranking 1 to 5 and
25 that data goes to your secure terminal.

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2 A. Yes.

3 Q. What do you with that information?

4 A. So it works very similar. I
5 assume you probably have an exhibit.

6 Q. Why don't we look at Exhibit 13
7 and 14?

8 A. Yes.

9 13 is the exact same thing. It
10 says interview but it is actually the final
11 ranking.

12 It happens after the interview.
13 It is essentially the same thing. They are
14 entering 1, 2, 3, 4, 5 there.

15 You can probably make it out
16 there.

17 The computer tabulates again who
18 the winners are and the top contestant, the
19 top scoring contestant broadcasts Miss USA
20 and the second is the first runner up and so
21 on down the line.

22 Q. By the way, that is your signature
23 on the top of the page?

24 A. It is.

25 Q. Exhibit 14?

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2 A. Yes.

3 Q. What is that?

4 A. It is the printout from our
5 spreadsheet which has the same thing so we
6 are replicating the exact same thing that is
7 happening.

8 That is just the printout from my
9 spreadsheet.

10 Q. Do you take that information and
11 put it on a card?

12 A. I do.

13 Q. That is Exhibit 37?

14 A. That is 38.

15 Q. 38?

16 A. That's right. This one works a
17 little differently.

18 Same way in terms of assigning
19 labels to it. Attaching labels to it except
20 this is one that I personally deliver to the
21 host on live television.

22 Q. Again --

23 THE ARBITRATOR: That one is not
24 done randomly.

25 THE WITNESS: That is not random.

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2 That is right. This is not random.

3 Very specific.

4 BY MR. BALBER:

5 Q. You are taking information from
6 Exhibit 13 and 14 and you are creating that
7 card?

8 A. Correct.

9 Q. How much time is there between the
10 moment you create that card, Exhibit 38, and
11 the moment it is announced on national
12 television.

13 A. I am an accountant. That one is
14 probably four or five minutes again.

15 Q. Prior to you creating that card it
16 does not exist?

17 A. The card exists. It doesn't exist
18 with the labels on it.

19 Q. Does anybody see that card other
20 than you, the other folks from Ernst & Young
21 and the technical people who are operating
22 the computer?

23 A. No. Nobody.

24 Q. Again you call the truck with the
25 information?

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2 A. Yes.

3 Q. And you deliver it to the host?

4 A. Correct.

5 Q. It is announced on live
6 television?

7 A. Correct.

8 MR. BALBER: We offer Exhibits 36,
9 37, 38.

10 THE ARBITRATOR: Okay. Admitted.
11 I don't think I have those.

12 MR. BALBER: We don't. These are
13 the actual cards.

14 (Claimant's Exhibit 36 received in
15 evidence)

16 (Claimant's Exhibit 37 received
17 in evidence)

18 (Claimant's Exhibit 38 received in
19 evidence)

20 MR. BALBER: We will give them to
21 you before you leave.

22 BY MR. BALBER:

23 Q. After the pageant did you come to
24 learn that some allegations were made about
25 it being rigged?

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2 A. I did.

3 Q. Did you and Ernst & Young prepare
4 any press statement to respond to those
5 allegations?

6 A. We did.

7 Q. Let me show you what has been
8 marked as Exhibit 22?

9 A. Okay.

10 Q. What is Exhibit 22?

11 A. Exhibit 22 is a statement that we
12 released in response to those allegations
13 that you referenced.

14 Q. Who is the "we?"

15 A. Ernst & Young, but I worked on it
16 with our public relations representative
17 which is a guy named Charlie Perkins.

18 Q. Is it fair to say that the purpose
19 of this memo was to confirm that Ernst &
20 Young was independent, is that right?

21 A. Correct.

22 Q. And that Ernst & Young had
23 designed the controls that were put in place
24 for the judging?

25 A. I don't know if that was the

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2 purpose.

3 We certainly did but I don't know
4 if that was the purpose.

5 The purpose was to make it clear
6 to the media and others who were interested
7 what our role was, what we did, when we did
8 it, when information was calculated and
9 known and when it was not.

10 Q. You say in the memo that Ernst &
11 Young independently tabulated the judge's
12 votes?

13 A. Correct.

14 Q. And that the results of the
15 tabulation remained under Ernst & Young's
16 control until they were presented to the
17 host during the live broadcast?

18 A. Correct, yes.

19 Q. You also say in your memo that no
20 one could have seen either list, meaning the
21 final ten or the final five, beforehand,
22 right?

23 A. Yes. Miss Universe Organization,
24 Donald Trump, NBC, the celebrity judges nor
25 any of the contestants could have known what

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2 the final five were before the evening gown
3 competition because the tabulation was
4 completed and verified by us.

5 Q. And the list was created by you?

6 A. Yes, and the order.

7 MR. BALBER: We have no further
8 questions.

9 THE ARBITRATOR: Just -- does
10 Ernst & Young participate in the
11 rehearsal?

12 THE WITNESS: We do.

13 THE ARBITRATOR: During the
14 rehearsal do you prepare any lists or
15 anything like that, who is going to be
16 in the top 16 or top five?

17 THE WITNESS: Sure.

18 So there is two different -- there
19 are three different types of rehearsals.

20 There is rehearsals that go on
21 throughout the week and there is lots of
22 lists of groups.

23 You can imagine 51 contestants,
24 trying to keep track of who rehearsed in
25 certain segments and who hasn't, so

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2 there are lots of lists, not having
3 anything to do with us, but we know
4 because we have a copy of the whole book
5 and binder, all the lists.

6 This is one list. There is a
7 rehearsal that happens the day before
8 the show, generally called start-stop.

9 We are more actively attuned to
10 the lists because we generally attend
11 the start-stop rehearsal so we like to
12 see the flow of the show, the timing of
13 the show.

14 Every show is a little different
15 and we plan things down to a few seconds
16 and so changes in the show, even things
17 that are happening at the very last
18 moment, we are very interested in
19 understanding what those changes are and
20 how it impacts.

21 We have something like 100 tasks
22 that we have to do during the course of
23 the show. We practice that.

24 The third type of rehearsal is the
25 dress rehearsal which happens just

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2 before the live show, a few hours before
3 the live show and essentially is a run
4 through of the two hours, almost real
5 time, and there is -- for that rehearsal
6 there is a list of 16 contestants that
7 are identified but from that point
8 onward, just like real life, just from
9 that point onward who is going to
10 proceed from 16 to 10 to 5 to the winner
11 is something we do sort of real time on
12 the fly to practice the tabulation
13 without working towards a predicted
14 outcome so that is the third type of
15 rehearsal.

16 There is lists associated with
17 each of those and we participate mostly
18 just in the start-stop and in the dress
19 rehearsal.

20 THE ARBITRATOR: You create those
21 lists for the rehearsal?

22 THE WITNESS: We don't.

23 THE ARBITRATOR: You don't?

24 THE WITNESS: We don't.

25 The only thing we do create for

1 Goldhamer - direct
2 rehearsals are -- for the dress
3 rehearsal, we practice with the labels
4 because that is the real time.

5 We want to see how long it takes
6 to put the labels on the cards and
7 practice that and then for -- we have a
8 saying, a determination for the dress
9 rehearsal only who is going continue
10 from 16 to 10 to 5 to 1 because that is
11 not predetermined and we want to
12 practice based on people standing in for
13 judges what the actual outcome would be
14 and just watch the flow of the show that
15 way.

16 BY MR. BALBER:

17 Q. Just so I am clear, during the
18 rehearsal you actually are delivering a card
19 to a pretend host?

20 A. During the rehearsal we do it just
21 like we would during the real show.

22 Q. Am I correct that the 51 girls who
23 are competing would actually see the cards
24 delivered to the hosts?

25 A. They may not see -- certainly see

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2 the final card because it is happening on
3 stage with all of them present there.

4 The 16 to 10 and the 10 to 5 and
5 the top 16 card, the initial card, they may
6 not see it because it is happening off the
7 wing to the side where the hosts go to grab
8 a drink of water so during a commercial
9 break typically the hosts go off stage, they
10 are reviewing their script, getting dabbed
11 with makeup and we would go over that at a
12 station and deliver the card.

13 THE ARBITRATOR: But during the
14 rehearsal?

15 THE WITNESS: During the rehearsal
16 and during the live show. Same thing.

17 THE ARBITRATOR: When these cards
18 are prepared for the rehearsal what is
19 done with them after the rehearsal?

20 THE WITNESS: After the rehearsal
21 I would not know that.

22 THE ARBITRATOR: You don't take
23 charge?

24 THE WITNESS: No. Our job is to
25 ensure we verify, tabulate, deliver a

1 Goldhamer - direct
2 card and make sure that the right
3 winners are announced on stage.

4 After that it is just a card with
5 labels on it that we don't have much of
6 an interest in.

7 BY MR. BALBER:

8 Q. One other question that the judge
9 asked Ms. Shugart. She didn't have a
10 precise answer.

11 Where do you and your team
12 physically sit during the live broadcast?

13 A. It varies from show to show. We
14 are typically in the house at a place where
15 we have a view of the stage; usually
16 cordoned off area.

17 You will see a lighting table or
18 table sort of towards the back or side of
19 the house mixing with the audience but back
20 so in this case for this show we were
21 probably I think behind the audience sort of
22 like stadium type seating.

23 THE ARBITRATOR: So the
24 contestants are nowhere near you?

25 THE WITNESS: No. We are in the

1 Goldhamer - direct
2 back of the house.

3 BY MR. BALBER:

4 Q. By the way, you prepared the
5 rehearsal cards. You said that a minute
6 ago.

7 Let me ask it differently. You
8 put the stickers on the cards for the
9 rehearsal?

10 A. Yes.

11 Q. Do you know whether the final five
12 rehearsal card was identical and in the same
13 order as the actual final telecast five?

14 A. So highly unlikely and I would
15 think the answer is, no, but I want to say
16 no, but, without actually -- I don't recall.

17 Q. You have no reason to believe it
18 was the same as the final five?

19 A. No, because -- no.

20 Q. Being an accountant what would be
21 the mathematical odds of your top five being
22 ranked in the same order in the rehearsal as
23 the ultimate final five being ranked in the
24 same order?

25 A. Speculation. I am not a

1 Goldhamer - direct

2 statistical accountant. I am a practical
3 accountant.

4 I don't -- unlikely.

5 Q. Exponentially large?

6 A. Certainly would be reasonable to
7 say unlikely. How is that for an answer?

8 Q. Good enough.

9 MR. BALBER: No final questions.

10 THE ARBITRATOR: Thank you.

11 MR. BALBER: Shall we take the
12 lunch break?

13 THE ARBITRATOR: Yes. This is a
14 good time?

15 (Luncheon recess: 1:42 p.m.)

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1 Heitkamp - direct

2 AFTERNOON SESSION

3 2:19 p.m.

4 CRAIG HEITKAMP, called as a witness by the
5 Claimant, having been duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BALBER:

9 Q. Mr. Heitkamp, where are you
10 currently employed?

11 A. I work for Future Productions.

12 Q. What is your position there?

13 A. Vice president.

14 Q. You are also an owner of Future
15 Productions?

16 A. I am, yes.

17 Q. Who is the other owner?

18 A. My wife.

19 Q. What does Future Productions do?

20 A. We produce seven of the state
21 events for the Miss Universe organization.

22 Q. How long has Future Productions
23 been in this business?

24 A. We are in our 11th year of
25 producing state events.

1 Heitkamp - direct

2 Q. You said you produce for seven
3 states. Which states are those?

4 A. They are Colorado, Wyoming, North
5 Dakota, South Dakota, Iowa, Wisconsin and
6 Wyoming.

7 Excuse me.

8 Wisconsin -- Colorado, Wyoming,
9 North Dakota, South Dakota Minnesota, Iowa
10 and Wisconsin. Those are the seven.

11 THE ARBITRATOR: A lot of swing
12 states in there.

13 MR. BALBER: Your states may
14 decide the election.

15 BY MR. BALBER:

16 Q. Am I correct that Future
17 Productions is a franchisee of the
18 Miss Universe organization?

19 A. Correct, yes.

20 Q. As a franchisee that is the
21 mechanism by which you produce these state
22 events?

23 A. Correct. We franchise the rights
24 from the Miss Universe organization to use
25 their brand or their trademark within those

1 Heitkamp - direct

2 states to produce our event.

3 Q. Are you aware of any other
4 franchisee that produces as many states or
5 more than you do?

6 A. No. We are the largest at seven.

7 Q. What is the role of Future
8 Productions as a franchisee of
9 Miss Universe?

10 A. Well, there are a number of them.

11 The primary ones are to produce a
12 state event, to produce an event where we
13 crown two winners, one of which goes to the
14 Miss Teen USA and one which goes to the
15 Miss USA pageant.

16 The second is help those
17 individuals, those girls who win, those 14
18 title holders, two per state, seven states,
19 to prepare and be ready to compete at the
20 national pageant.

21 The third piece is we oversee and
22 manage their careers basically for that year
23 so we oversee their appearances, their media
24 interactions, endorsements, et cetera.

25 And then the fourth piece of that

1 Heitkamp - direct
2 is that we kind of serve as an advocate for
3 the Miss Universe organization within our
4 state.

5 We are sort of the grass roots
6 structure for Miss Universe within our
7 states.

8 Q. How do the contestants come to
9 participate in the statewide events?

10 A. They all apply on our web site.
11 We take a look at that and we accept a
12 certain number of them and then those
13 individuals sign up to compete and they pay
14 a registration fee in order to compete in
15 the event.

16 Q. Does Future Productions as a
17 franchisee pay a fee to the Miss Universe
18 organization?

19 A. Yes. Every state varies based on
20 population and pageant size and popularity.

21 We pay a franchisee fee of various
22 amounts in each state each year for the
23 right to produce those.

24 Q. I think you testified a minute ago
25 that you receive entry fees from

(51)

1 Heitkamp - direct

2 contestants?

3 A. Correct.

4 Q. What are the other sources of
5 revenue for Future Productions?

6 A. There are only two main ones. It
7 is the registration fees from the
8 contestants, they pay an amount. It can
9 vary from state to state to enter the event.

10 And the other piece is ticket
11 revenue from friends and families and
12 audience members coming to watch the shows.

13 Q. Other than the franchise fee you
14 pay to Miss Universe are there other costs
15 associated with running your organization?

16 A. Yes. I mean all the costs.

17 Everything that is required to
18 produce the event is on our bill so it is
19 the venue rental, the transportation, the
20 housing, the food, the production cost, the
21 salary, insurance, everything.

22 Q. Are some of those costs fixed and
23 some variable meaning some you have to pay
24 regardless of the number of girls and some
25 vary depending upon how many girls compete?

1 Heitkamp - direct

2 A. Almost all of them are fixed
3 regardless if we have one contestant or 100
4 contestants the venue rental is the same,
5 the insurance cost is the same.

6 The only variables are the housing
7 and the meals for the contestants which is
8 pretty minor.

9 Q. It is fair to say that once you
10 have covered your fixed costs with the entry
11 fees and the ticket sales the rest above
12 that is all profit?

13 A. 99 percent of it. We have a
14 pretty good idea as an organization how many
15 contestants we need to have in order to
16 break even.

17 Q. You are aware that we are here
18 because Ms. Monnin made some public
19 statements about the Miss Universe
20 organization?

21 A. Yes.

22 Q. And have those public statements,
23 i.e., that the pageant is rigged, have had
24 any impact, any negative impact on your
25 seven states?

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2 A. Yes. I mean, we now, this fall,
3 have produced five of our seven events and
4 we have answered a lot of questions from
5 state contestants, mostly their parents
6 really, on whether there was any validity to
7 that, is there any concern on our end,
8 should they be concerned.

9 We certainly answered a lot of
10 questions in those in that recruitment
11 process of getting girls to sign up and
12 compete.

13 Q. These are questions by girls, by
14 their parents. How frequently have you
15 faced those questions in four or five months
16 since the comments were made?

17 A. Probably had 20 to 25 questions
18 asked and for every one that is willing to
19 prompt the question I am sure there are
20 quite a few that don't ever make the phone
21 call if there is a concern.

22 That is a substantial amount.
23 That is incredibly abnormal.

24 We have been doing this for a long
25 time so the nature of the conversations you

1 Heitkamp - direct

2 have with the contestants are pretty
3 consistent year to year.

4 It is unusual to have those types
5 of questions posed.

6 Q. Have seen any impact on the
7 ability of your states to recruit girls to
8 compete in the statewide pageants?

9 A. You see the impact once the state
10 pageant is complete. You see whether or not
11 your contestant numbers were the same or
12 higher or lower than the previous year's and
13 we have seen a pretty massive reduction.

14 Of the five events of the seven we
15 have done this fall four of those five have
16 had very large reductions of contestant
17 numbers, three of them double digit
18 reductions.

19 Q. Let me show you Exhibit 23 in that
20 book over there.

21 Do you recognize Exhibit 23?

22 A. Yes. This is the spreadsheet I
23 put together for you.

24 Q. What does this spreadsheet show?

25 A. The first column are the seven

1 Heitkamp - direct

2 states that we produce.

3 The second column says 2012.

4 Basically we produce the 2012
5 event in the fall of 2011. So that is last
6 year's contestant numbers for our events.

7 The 2013 column shows the
8 contestant numbers thus far. Obviously, we
9 have two events that are still upcoming next
10 weekend and Thanksgiving that haven't been
11 completed yet.

12 The third column shows the change
13 in current year to previous year. So you
14 can see three of those states were double
15 digit reductions.

16 Wisconsin was the lone state that
17 had an increase.

18 So the net change was a pretty
19 drastic reduction.

20 Q. Is this -- before you go on, is
21 this kind of volatility in the number of
22 contestants in your states something you
23 have seen before?

24 A. No. Typically the contestant
25 numbers stay very consistent.

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2 We do the same set of marketing
3 each year and to see this drastic of a
4 change is pretty dramatic.

5 Specifically, just because it was
6 just last weekend, our South Dakota pageant
7 to go from 58 contestants to 43.

8 To see 15 contestants reduced from
9 previous years, that is the lowest numbers
10 that we have ever produced in that state.

11 Q. On a percentage basis is that a
12 significant change?

13 A. That is massive, yes.

14 Q. Next to the column that says
15 "change," what is the arithmetic
16 computations there?

17 A. Each of these states have a
18 registration fee that they signed up to
19 compete so, for instance, the first row
20 there in that column is 16 times 899.

21 899 is the registration fee to
22 compete in Colorado.

23 Our average ticket price is
24 \$35 and I know from a decade of doing this
25 amongst the states that we sell an average

1 Heitkamp - direct
2 about six-and-a-half tickets per contestant
3 for each show, a preliminary show and a
4 final show.

5 It gives the breakdown of the raw
6 reduction in revenue is.

7 That second to last column, the
8 change in gross revenue, is just the
9 calculation summed up and then again as we
10 said earlier your only expenses for those
11 additional contestants is hotels and meals
12 so the final column just takes into account
13 what expenses would have been put out for
14 those girls and it shows the reduction in
15 net profit for us as an organization.

16 Q. This is a net total for your
17 organization for the five states that have
18 happened so far is a \$45,000 loss?

19 A. Correct.

20 Q. That is all off your bottom line?

21 A. Correct.

22 Q. Is that significant in your seven
23 state scheme?

24 A. You know, in our organization in
25 the midwest that is somebody's salary so,

1 Heitkamp - direct

2 yes, it is quite significant.

3 Q. Do you communicate with other
4 state directors about how they are faring in
5 their state pageants?

6 A. This time of year it gets busy but
7 I do communicate with all of them.

8 They are very much so experiencing
9 the same type of things that we are.

10 Q. The same in some cases, double
11 digit drops in contestants?

12 A. Correct.

13 THE ARBITRATOR: You said that you
14 held five out of your seven events?

15 THE WITNESS: Yes.

16 THE ARBITRATOR: So do you
17 actually know what the actual attendance
18 was and how it correlates with what you
19 sort of generally expect in terms of 6.5
20 per contestant?

21 THE WITNESS: I wouldn't have
22 actual ticket sales numbers until the
23 end of year.

24 It is not something that is done
25 necessarily on site but as a visual,

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2 over doing it for ten years, we have to
3 plan our venues according to our
4 contestant numbers so knowing that
5 calculation and knowing that average
6 number of ticket sales is really vital
7 in the planning process because the last
8 thing you want to do is sell out and not
9 be able to have parents come in and
10 watch their daughter compete so we have
11 gotten very good at knowing what that is
12 going to change.

13 That does not change or fluctuate
14 very much from year to year.

15 Six-and-a-half is pretty
16 consistent for almost a decade.

17 BY MR. BALBER:

18 Q. What is the basis for your belief
19 that this decline in your, at least five
20 states, is attributable to Ms. Monnin's
21 comments?

22 A. When there is that big of a
23 change, ten years is a pretty good sample
24 size to determine volatility in a market
25 like that.

1 Heitkamp - direct

2 To see that sort of reduction that
3 we have never seen before, the only thing
4 that is different is the conversations that
5 we are having to have in reference to Sheena
6 Monnin's statements that she made, that is
7 the only thing that has changed from our
8 standpoint.

9 Q. What is going to happen to your
10 organization if you continue to see double
11 digit declines in the number of girls who
12 compete in your pageants?

13 A. It becomes very difficult to run a
14 profitable organization, number one.

15 We will have to make reductions
16 and make changes and probably the end result
17 is going to be contacting the Miss Universe
18 organization to renegotiate those franchise
19 fees that we pay every year.

20 There comes a point where paying
21 that much in a franchise fee will not be
22 possible because we can't generate the
23 contestant numbers to do it.

24 Q. When did you fly in?

25 A. This morning.

1 Heitkamp - direct

2 Q. Where did you come from?

3 A. Well, our South Dakota event was
4 last night in Sioux Falls, South Dakota so
5 it was a bit of a trip to get here.

6 Q. Can you tell us why you flew in
7 from Sioux Falls this morning for a 10 or 15
8 minute bit of testimony?

9 A. When there is that big of a change
10 in our business. We are a small business,
11 we are three employees, and that is a
12 dramatic change.

13 This is mortgage payments and it
14 is peoples' salaries that are changing at
15 this point so I am -- yes, I am running on
16 about 90 minutes sleep but it was important
17 for me to be here to make sure that people
18 understood the ground game and result when
19 there is that sort of change.

20 MR. BALBER: No further questions.

21 THE ARBITRATOR: Let me ask you,
22 do you have any interest in seeing one
23 of your seven states winners go on to be
24 Miss USA?

25 THE WITNESS: It is helpful.

1 Heitkamp - direct

2 There is no financial interest but it is
3 helpful in that it brings attention to
4 the state pageant.

5 It is kind of like if the Yankees
6 win the World Series it brings an
7 interest to the City of New York.

8 The same goes for our states. If
9 we have a national winner it brings some
10 interest to the state, but other than
11 that, that is really --

12 THE ARBITRATOR: Have you ever had
13 any feeling that the outcome of the
14 contest, particularly in 2012, was not
15 truthful?

16 THE WITNESS: No. As directors we
17 sit and watch these national pageants
18 every year and you become quite
19 accustomed to knowing which girls really
20 stand out and which ones will do well.

21 I had no questions about it. The
22 girl that won is extraordinary and she
23 was the one who I chose when I saw the
24 top 15 so it made absolute sense to me.

25 THE ARBITRATOR: Thank you.

1 Heitkamp - direct

2 MR. BALBER: Thank you very much.

3 THE ARBITRATOR: Get some sleep.

4 MR. BALBER: Let me get our next
5 witness.

6 (Pause)

7 MR. BALBER: I want to offer
8 Exhibit 23.

9 THE ARBITRATOR: 23 will be
10 admitted.

11 (Claimant's Exhibit 23 received in
12 evidence)

13 JONATHAN LOW, called as a witness by the
14 Claimant, having been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BALBER:

18 Q. Mr. Low, what do you do for a
19 living?

20 A. I am a partner in a consulting
21 firm called Predictiv Consulting.

22 We specialize in measuring the
23 financial impact of intangibles like brand
24 and reputation.

25 Q. If you look in your exhibit book,

1 Low - direct

2 Exhibit 29, what is Exhibit 29?

3 A. Exhibit 29 appears to be my
4 biographical information.

5 MR. BALBER: We offer Exhibit 29.

6 THE ARBITRATOR: Admitted.

7 (Claimant's Exhibit 29 received in
8 evidence)

9 BY MR. BALBER:

10 Q. While it is all there, if you can
11 give us some of the highlights of your
12 professional career?

13 A. Okay. I am a graduate of
14 Dartmouth College and Yale University School
15 of Management.

16 I worked in various consulting
17 firms for a number of years.

18 I was a Deputy Assistant Secretary
19 of Labor from 1993 to 1996. My title
20 assistant was deputy assistant for work and
21 technology policy.

22 A lot of work I did focused on
23 trying to understand the transition through
24 which the economy was going from an
25 industrial to a service-based economy.

1 Low - direct

2 I had a research budget of about
3 \$2 million and much of the research we
4 sponsored focused on trying to understand
5 why companies were going out of business and
6 specifically whether we could identify
7 predictive metrics that would help the
8 Department of Labor project when companies
9 in specific might be unloading in their
10 pension liabilities on the Pension Benefit
11 Guarantee Corporation.

12 Q. What have you done since you left
13 your position as -- under the secretary of
14 labor?

15 A. When I left the Department of
16 Labor I went to work for the Ernst & Young
17 consulting division which later became Cap
18 Gemini Ernst & Young and I led a practice
19 there focused on trying to identify, measure
20 and help companies manage the impact of
21 these intangibles which have become a much
22 more dominant part of the performance of
23 companies in the service economy but which
24 are not covered by GAAP or international
25 accounting standards.

1 Low - direct

2 Q. Then did you ultimately form your
3 own organization?

4 A. Yes. In 2002 a colleague and I
5 were given the opportunity to write a book
6 about our work on intangibles which we did.

7 It was called Invisible Advantage
8 and as a result of the publication of that
9 book we were encouraged to form our own firm
10 which is Predictiv and have been working in
11 that capacity ever since.

12 Q. What are some of the things you
13 have done through your Predictiv entity?

14 A. We generally work with large
15 corporations and try to help them understand
16 the impact that factors like brand and
17 reputation, the financial impact, the
18 factors like brand and reputation might have
19 on scenarios and outcomes that they are
20 anticipating particularly in the global
21 economy as they are facing competition,
22 threats and opportunities from previously
23 unforeseen quarters.

24 Q. What was your assignment in this
25 case?

1 Low - direct

2 A. We were asked to look at whether
3 or not the allegations by Ms. Monnin might
4 have an impact on the brand and reputation
5 of the Miss Universe organization, and, if
6 so, what the scope of that impact might be.

7 Q. What did you do to execute that
8 assignment?

9 A. Well, the first thing we did was
10 look for data that might shed light on the
11 experience of other companies that had faced
12 reputational challenges, whether actual or
13 alleged and to see what the scope of the
14 positive or negative impact might be.

15 What we discovered was that the
16 impact tended to be negative and it tended
17 to be far more significant than we
18 anticipated.

19 We identified seven companies
20 which in the last 10 to 15 years had
21 suffered significant challenges, companies
22 like Toyota, Goldman Sachs, News Corp.,
23 Intel, Wal-Mart and so forth, British
24 Petroleum, and what we looked at was the
25 scope of the decline they experienced

1 Low - direct
2 particularly in the five months from the
3 point at which the allegations became public
4 and the five months succeeding that.

5 We chose the five month period
6 because it has been five months since Ms.
7 Monnin's allegations became public.

8 Q. What were some of the reputational
9 challenges that those seven companies you
10 identified have faced?

11 A. Well, perhaps the most dramatic, I
12 can go through all of them, but perhaps the
13 most dramatic was the one faced by Coca-Cola
14 in 1999.

15 You may recall that a group of
16 Belgian school children became sick and
17 originally it was thought it was a stomach
18 virus but it turned out to be more
19 prolonged.

20 And the children alleged -- the
21 children and eventually their parents
22 alleged that it was due to a bad batch of
23 Coca-Cola and although it was difficult
24 chemically to identify what specifically
25 might have been bad about that batch,

1 Low - direct

2 Coca-Cola eventually acknowledged that it
3 could have been a batch of CO2 gas which is
4 used in the manufacture of Coca-Cola that
5 might have affected this.

6 Subsequent research determined
7 that, in fact, it was not a bad batch, there
8 was nothing wrong with the CO2, but the
9 damage to Coca-Cola was almost catastrophic.

10 The company lost \$34 billion in
11 market value. Its European subsidiary
12 registered a \$215 million loss for that
13 year.

14 The company's planned and
15 previously agreed to acquisition of Orangina
16 which is a large European soft drink company
17 which was supposed to have been the catalyst
18 for its expansion into eastern Europe was
19 derailed by the European commission and six
20 months later the CEO was replaced so that is
21 probably the most extreme example.

22 I don't think it is necessarily a
23 bad one because it shows what can happen
24 when individuals who may or may not be
25 motivated by goodwill or by their own